

Exhibit 3

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re 272 E. Santa Clara
Grocery, LLC,
Debtor.

CASE NO. 13-53491
Chapter 11

DEPOSITION OF ANDREW LEWIS

DATE: September 18, 2013

TIME: 9:40 a.m.

LOCATION: HOPKINS & CARLEY
70 S. First Street
San Jose, CA 95113

REPORTED BY: KAREN L. BUCHANAN
CSR No. 10772
CLR No. 031106-04

1 MR. HEALY: Who is that video camera 09:41:59
2 looking at right now? 09:42:02

3 THE WITNESS: Me. 09:42:05

4 MR. HEALY: At the witness? Before we 09:42:06
5 commence, I want to make an objection for the 09:42:09
6 record. Tell me when you think it's appropriate. 09:42:12

7 THE VIDEOGRAPHER: Would the Court Reporter 09:42:15
8 please swear in the witness. 09:42:17

9 ANDREW LEWIS, 09:42:17
10 being duly sworn by the Certified Shorthand Reporter 09:42:17
11 to tell the truth, the whole truth, and nothing but 09:42:17
12 the truth, testified as follows: 09:42:17

13 MR. KOTTMEIER: Okay. 09:42:27

14 MR. HEALY: I'm going to go ahead and make 09:42:28
15 an objection here that there was nothing to my 09:42:30
16 knowledge in my review of the application and the 09:42:32
17 order referencing a videotape of this examination. 09:42:34
18 And I believe under both the Federal rules and the 09:42:39
19 California rules that that is required. So we're 09:42:43
20 going to sit here, but with the videotape on, but we 09:42:46
21 reserve the right to walk out because of videotape. 09:42:50

22 THE WITNESS: We can walk out now. 09:42:54

23 MR. HEALY: When I ask you a question and 09:42:56
24 he asks you a question, you can answer. Otherwise, 09:42:59
25 be quiet. 09:43:01

1 Q. Did you -- as of May of 2009, did you have 11:33:59
2 any standard practices that you used to evaluate a 11:34:02
3 potential loan? 11:34:08

4 A. Generally speaking, we got some type of 11:34:09
5 application. We found out what the property was, 11:34:14
6 and we had to get a feel for what the value was, and 11:34:17
7 then we have to generally get an understanding for 11:34:21
8 what the money was used for or going to be used for 11:34:24
9 and how we were going to be paid on a monthly basis 11:34:28
10 until the loan was paid back. So it was just 11:34:33
11 general underwriting that would be done even by a 11:34:36
12 bank. But a bank's underwriting procedure is much 11:34:40
13 more rigorous than ours. 11:34:45

14 But in the hard money business, we have 11:34:48
15 done loans in as little as three days and things of 11:34:51
16 that sort. We can respond much quicker to 11:34:54
17 opportunities and therefore command a higher 11:34:58
18 interest rate. 11:35:02

19 Q. With respect to valuation determinations, 11:35:03
20 did you have any standard practice or procedure that 11:35:06
21 you used to try to value the potential collateral? 11:35:08

22 A. The word "standard practice" doesn't really 11:35:14
23 compute with me. I had to evaluate based on my 11:35:18
24 expertise and my knowledge of the market to get 11:35:21
25 comfortable in a valuation. So that would include 11:35:24

1 things like appraisals, again, knowledge of the 11:35:27
2 market, how unusual the type of property was. And 11:35:31
3 if I could get comfortable with the valuations that 11:35:36
4 were being made by the borrower and his demands were 11:35:40
5 within what we would consider a regional lending 11:35:44
6 range, which I could describe to you, but then we 11:35:48
7 did the deal. 11:35:51

8 Q. When you say "reasonable lending range," 11:35:53
9 what do you mean by that? 11:35:55

10 A. We have different lending ranges, loan to 11:35:56
11 values, based on the type of asset, differing like 11:36:00
12 land versus commercial property; lease versus 11:36:08
13 unleased; owner occupied, nonowner occupied, 11:36:13
14 et cetera and so forth. 11:36:17

15 Q. Did you have any practice or procedure with 11:36:19
16 respect to getting information on environmental 11:36:20
17 issues for potential collateral? 11:36:23

18 A. Yes. It depends on the situation. I mean 11:36:26
19 as it pertains to this property, which I think would 11:36:29
20 be an answer you'd like, we didn't feel like we 11:36:33
21 needed any environmental information, because it had 11:36:37
22 always been a grocery store, to the best of our 11:36:40
23 knowledge. And it was in the middle of downtown 11:36:42
24 San Jose, and there had been a lot of transactions 11:36:44
25 recorded and done regarding the property. Plus our 11:36:47

1 borrower told us in no uncertain terms that the 11:36:53
2 property was clean. 11:36:57

3 Q. Who was -- 11:36:57

4 A. So -- 11:37:00

5 Q. Go ahead. 11:37:01

6 A. -- and finally, within a relatively short 11:37:02
7 time, we saw an institutional lender doing a loan on 11:37:07
8 the property. And we know the rigorous -- the 11:37:11
9 generally rigorous underwriting procedures that they 11:37:15
10 take, and we often dovetail off that information to 11:37:19
11 do our loans. 11:37:24

12 Q. The institutional lender you're speaking of 11:37:24
13 here is Borel? 11:37:29

14 A. Borel. 11:37:30

15 Q. What is -- when you say you dovetail off 11:37:30
16 what the institutional lender does, what do you mean 11:37:33
17 by that? 11:37:37

18 A. For example, we accepted the appraisal. We 11:37:38
19 didn't do an additional appraisal. We didn't feel 11:37:40
20 an additional appraisal was necessary, given the 11:37:42
21 fact that the appraisal I believe was in '09, and we 11:37:46
22 were a couple of years later. And things had not 11:37:49
23 gotten worse, they had gotten better. So we made 11:37:52
24 the assumption, based on our knowledge of that 11:37:54
25 appraiser and our knowledge of the market, which is 11:37:57

1 a local market, that if anything, the property value 11:38:00
2 would have been higher than what was on that piece 11:38:02
3 of paper, not lower. 11:38:05

4 And the appraisal, to the best of my 11:38:08
5 knowledge, was clean, plus the investor said it was 11:38:10
6 clean. 11:38:14

7 Q. When you say "clean," you mean that there 11:38:17
8 were no environmental issues with respect to the 11:38:19
9 property? 11:38:21

10 A. Yes. 11:38:21

11 Q. Who was -- who was it that -- at the 11:38:21
12 borrower who told you that the property was clean? 11:38:27

13 A. I can't answer for sure, but I will say it 11:38:29
14 was either David or Kimball Small. It was one of 11:38:35
15 those two. 11:38:38

16 Q. And was it -- were you the person who was 11:38:38
17 the recipient of that information personally? 11:38:41

18 A. Yes. 11:38:44

19 Q. And was that in conversation, or was that 11:38:44
20 by writing? 11:38:47

21 A. Conversation. 11:38:47

22 Q. How did the subject come up between you and 11:38:48
23 whichever of the Smalls it was that had the 11:38:57
24 conversation with you? 11:38:59

25 A. I don't remember. 11:39:00

1 Q. Was it your practice to ask a potential
2 borrower?

3 A. Yes.

4 Q. What generally would you ask a potential
5 borrower on the subject of environmental?

6 A. "Is there any environmental problems?"

7 Q. That's typically your question, just simple
8 as that?

9 A. Simple as that.

10 Q. And did you ever --

11 A. And the appraisal, for what it's worth,
12 didn't show anything and didn't say anything, to the
13 best of my memory. I wish we had it here, but I
14 don't have it here.

15 And often -- I'll add, often in situations,
16 if there is a known problem, that would be in the
17 appraisal.

18 Q. Did you -- with respect to the loan that
19 was made to Kimomex Santa Clara, did you ask anybody
20 if there was a Phase I or a Phase II done on the
21 property?

22 A. I don't recall. I might have asked. I
23 don't recall.

24 Q. Do you know what a Phase I is? Do you have
25 an understanding what that is?

1 A. Yes. 11:40:09

2 Q. Did you have an understanding in May of 11:40:09
3 2009 what that was? 11:40:11

4 A. Yes. 11:40:12

5 Q. In connection with any loans that 11:40:12
6 Investment Grade Loans made prior to that time, had 11:40:16
7 you ever asked for a Phase I to be provided to you? 11:40:19

8 A. Yes. 11:40:22

9 Q. And did you consider doing that on this 11:40:22
10 particular property? 11:40:25

11 A. No. 11:40:28

12 Q. Why not? 11:40:29

13 A. Because we just saw on institutional loan 11:40:29
14 put on it. And like I explained to you, in the 11:40:33
15 effort of time and cost, we figured we were okay. 11:40:36

16 Q. Did you discuss the making of the loan to 11:40:45
17 Kimomex Santa Clara with anybody who was one of your 11:40:47
18 employees with Investment Grade Loans? 11:40:51

19 A. Yes. I don't remember any detail of 11:40:54
20 discussion, but I would imagine I did, but I can't 11:41:02
21 give you -- 11:41:04

22 Q. Did you involve anybody in Investment Grade 11:41:04
23 Loans in the decision-making process when deciding 11:41:09
24 whether to make the loan or not? 11:41:11

25 A. No. I mean I might get inputs if they have 11:41:13

1 something to say, and those two people would be Alan 11:41:17
2 and Tom. 11:41:21

3 Q. Rancatore and Arndt? 11:41:21

4 A. Correct. And so I would have gotten inputs 11:41:24
5 from them if they knew something that they thought 11:41:26
6 was pertinent and valuable material. But -- 11:41:28

7 Q. Go ahead. I'm sorry. 11:41:31

8 A. -- my job is to do the underwriting and to 11:41:32
9 solicit -- to, you know, get the investors and fund 11:41:35
10 the loan. Their predominant job is to handle the 11:41:40
11 management after it's completed. 11:41:46

12 Q. You mean after the loan is made and in 11:41:50
13 place? 11:41:52

14 A. That's correct. 11:41:53

15 Q. Essentially the servicing part of the loan? 11:41:53

16 A. Yes. 11:41:59

17 Q. With respect to the loan that was made to 11:41:59
18 the Santa -- excuse me, Kimomex Santa Clara, LLC, 11:42:05
19 you got into this a little bit earlier, but I want 11:42:11
20 to make sure I understand it. How did that loan 11:42:13
21 come about? 11:42:16

22 A. I don't remember how we got the lead, 11:42:17
23 whether we got it from Borel Bank, who we had 11:42:19
24 relations with, or whether it came through another 11:42:23
25 source. So I don't remember how we got the lead. 11:42:26

1 Norm Hulberg. I thought it was Norm Hulberg. It's 11:50:17
2 his company, but we also know Steve Kuhnoff, too. 11:50:21

3 Q. Did you speak to Norm or did you speak to 11:50:29
4 Steve with respect to -- 11:50:32

5 A. Probably Norm. Maybe Steve. 11:50:34

6 Q. Do you know him? 11:50:37

7 A. Yes. I know them both. 11:50:37

8 Q. Was there anything else that you can recall 11:51:11
9 that you did with respect to investigation of the 11:51:13
10 potential loan to Kimomex Santa Clara as part of 11:51:17
11 your underwriting prior to making the loan? 11:51:21

12 A. Restate: Went to the physical property; 11:51:24
13 talked to the physical owner; talked about their 11:51:33
14 business; looked at other properties that he had 11:51:37
15 available that he wanted us to lend on. I remember 11:51:40
16 going to some others and not wanting to take them. 11:51:42
17 Discussion with the appraiser; noticing also that an 11:51:48
18 institutional lender that we do business with also 11:51:53
19 had just done a loan on it, and we know that we had 11:51:56
20 done loans with Borel Bank, so we know their 11:51:59
21 underwriting procedures. 11:52:02

22 Q. When you said you had done loans, is that 11:52:03
23 as a borrower you had done loans? 11:52:05

24 A. That is correct. 11:52:07

25 Q. When was the first time you had contact 11:52:18

1 with anybody at Borel regarding the 272 East Santa 11:52:20
2 Clara Street property or the loan that Borel had 11:52:28
3 made on that property? 11:52:31

4 A. I don't know. I'm going to guess -- would 11:52:32
5 you like me to -- 11:52:37

6 Q. The best -- 11:52:38

7 MR. HEALY: You woke me up. Don't guess, 11:52:39
8 but give him the best answer you can. 11:52:41

9 THE WITNESS: 2011 is the best answer I can 11:52:43
10 think of. 11:52:45

11 BY MR. KOTTMEIER: 11:52:45

12 Q. And what was it, what were the 11:52:46
13 circumstances that caused you to first have contact 11:52:47
14 with somebody at Borel? 11:52:50

15 A. He was getting foreclosed out by Borel. 11:52:52

16 Q. And how did -- "he" being? 11:52:55

17 A. Small. 11:52:56

18 Q. Small. And how did you learn that there 11:52:57
19 was a foreclosure that Borel had instituted? 11:53:00

20 A. I think we got notification from Borel as a 11:53:04
21 junior lender. 11:53:07

22 Q. So you get the typical notice of elections? 11:53:08

23 A. Notice of default, notice of sale. 11:53:10

24 Q. Okay. 11:53:13

25 MR. HEALY: Excuse me. Please let him 11:53:13

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CERTIFICATE

I, KAREN L. BUCHANAN, CSR #10772, do hereby
certify:

That prior to being examined, the witness
named in the foregoing deposition was by me duly
sworn to testify to the truth, the whole truth, and
nothing but the truth;

That said deposition was taken down by me in
shorthand at the time and place therein named, and
thereafter reduced to typewriting under my
direction.

I further certify that I am not interested in
the outcome of the action.

Witness my hand this 1st day of October,
2013.

KAREN L. BUCHANAN

CSR No. 10772

CLR No. 031106-04